

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

RON C. EVERETT,)	
)	
Petitioner,)	
)	
v.)	
)	Case No. CV412-073
DONALD BARROW,)	
Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Convicted of "two counts of robbery by force (OCGA § 16-8-40), one count of aggravated assault (OCGA § 16-5-21), one count of kidnapping (OCGA § 16-5-40), and one count of elder abuse (OCGA § 30-5-8)," *Everett v. State*, 297 Ga. App. 351, 351 (2009), Ron Everett petitions this Court under 28 U.S.C. § 2254 for habeas relief. Doc. 1. He also moves for leave to proceed *in forma pauperis*, doc. 2, which is **GRANTED**. But upon preliminary review under 28 U.S.C. § 2254 Rule 4, the Court concludes that the petition must be dismissed as untimely.

The court of appeals decision issued on April 6, 2009, and Everett then had ten days after the Georgia Court of Appeals affirmed his conviction to, under Georgia Supreme Court Rule 38, file a notice of

intent to apply for certiorari to the Georgia Supreme Court. He did not. Hence, his conviction became final on April 16, 2009 -- when his time for seeking review with the Georgia Supreme Court expired. *Gonzalez v. Thaler*, ___ U.S. ___, 132 S.Ct. 641, 656 (2012).

As recently explained in *French v. Carter*, 2012 WL 515255 (S.D. Ga. Feb. 15, 2012), 28 U.S.C. § 2244(d)(1)(A)'s federal one-year limitation clock ticks so long as the petitioner does not have a direct or collateral appeal in play. *Id.* at * 2. Everett says he did not file his state habeas petition until April 12, 2010. Doc. 1 at 3. Hence, he let 358 days lapse on the federal clock. That state habeas petition was denied on April 15, 2011. Doc. 1 at 3. He failed to timely appeal it, doc. 1 at 30 (Georgia Supreme Court's November 30, 2011 dismissal of his state habeas appeal as untimely), and did not file his § 2254 petition until March 12, 2012. *Id.* at 14 (his signature date). Hence, he is way beyond the 365-day limit.

Accordingly, his § 2254 petition must be **DISMISSED**.

SO REPORTED AND RECOMMENDED this 22nd day of March, 2012.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA